THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.7523, 7524, 7525, 9185 AND

9892 OF 2005

Disposed of on 31-08-2005

Between:

S.R.V.S.KRISHNA RAJU AND OTHERS…. PETITIONERS

AND

THE GOVERNMENT OF A.P., DEPARTMENT OF

INDUSTRIES AND COMMERCE AND OTHERS.. RESPONDENTS

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.7523, 7524, 7525, 9185 AND

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COMMON ORDER:

1. Since all these writ petitions involve common question of law, they have been taken up together at the instance of the learned counsel appearing for the parties. It is suffice to refer the prayer in W.P.No.7523 of 2005 and it is thus:

" For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a Writ, Direction or Order, more particularly one in the nature of Writ of Mandamus declaring the action of Respondent No.2 in not conducting the election to the third respondent-Sugar Factory to third respondent Sugar Factory before the expiry of term of outgoing elected committee as is mandatory under Section 32(1) © of A.P. Co-operative Societies Act, 1964 as illegal, violative of Articles 14, 19 and 41 of the Constitution of India…."

2. The sugar factory in the respective writ petitions is a Society registered under A.P.Cooperative Societies act, 1964. The petitioner in the respective petitions was elected as President in the elections held in 2000 for a period of five years. The period of five years is expired by 4.4.2005. The averments mentioned in the writ petition in detail are not required to be referred since the issue involved in the writ petitions is whether the elected body of the respective Cooperative societies is to be continued, after expiry of the period, till the new elected body takes charge of the affairs of the respective societies. When the Government contemplated appointing the persons incharge of the management of the affairs of the societies, outgoing Presidents have chosen to file these writ petitions.

3. Counter affidavit has been filed by the respondents in each of the writ petitions. It is suffice to refer the counter affidavit filed in W.P.No.7523 of 2005. It is stated in the counter affidavit that elections to the 3rd respondent-Society were held on 2.4.2000 and the petitioner was elected as President of the Society and took charge on 5.4.2000. According to the provisions of Sec.31 (2)(a) of A.P.C.S, Act, 1964 (for short Act) the term of office of the committee or any of its members or of the President elected in accordance with the provisions of sub section (5) shall be five years from the date of election of the members of the committee. The term of the Managing Committee/president expired on 1.4.2005 after noon. The same was intimated to the Managing Committee under Lr.Rc.No.G2/677/2005, dt.31-03-2005. During the year

2004, the Government have taken a decision to revive and restructure all the Cooperative Sugar Factories including Thandava Cooperative Sugars Limited, Payakaraopeta vide G.O.Ms.No.264, Industries and Commerce (Sugar) Department, dated 5.11.2004 and to run the Sugar Factories on sound lines. The Government has power under section 123 of APCS Act to exempt any Society or any class of societies from any of the provisions of the Act. There is no provision under the Act for extension of term of the elected Managing Committee. The Government is competent to appoint persons in charge to manage the affairs of the Society under Section 32(7)(a) of the Act. The factory sustained to losses to the tune of Rs.20.20 crores during the tenure of the petitioner committee. Conducting of elections to the society leads to additional financial burden to the factory at the present stage of revival and ensuing crushing season 2005-06 will also be disturbed. The Government have taken a decision to revive all the cooperative Sugar Factories in the State and to run them on professional, sound and viable manner. As a part of revival programme, Government have entrusted the work of conducting feasibility study for revival and restructuring package to the National Federation of Cooperative Sugar Factories Limited, New Delhi. There is no provision in the Act to continue the outgoing elected Managing committee in the office till fresh elections are conducted. Government is competent to appoint persons in charge under Section 32(7) (a) of the Act being the major shareholder of the Society, to the class of societies specified under rule 23-AA of A.P.C.S. 1964.

4. A reply affidavit has been filed by the petitioner. It is stated in the reply affidavit that the Government extended the term of the committee on earlier occasions. The respondents did not conduct elections from 1977 to 2000. Even the election to the society came to be conducted when a contempt application has been filed for implementation of the orders passed in W.P.No.2877 of 1996. I deem it appropriate to refer para 4 of the reply affidavit and it is thus:

> " 4. The allegations in paras 2 to 5 are absolutely untenable and hence denied. It is evident from the counter affidavit itself that the respondents are conscious about the expiry of the term but have deliberately not chosen to follow the mandate of Section 31(2) (b) of the APCS Act by conducting the elections. It is absolutely false to say that there is no provision for extension of the term of the Managing Committee. In fact, the respondent Government extended the term of the committee elected in 1974 from 1977 to 1981 and thereafter appointed official person

in charge till 2000. In fact, the extension to the elected body had to be given on insistence of the same by the central financial institutions including IFCI and IDBI. But, the respondents did not conduct the elections 1977 till 2000. Even that election was conducted only after this Hon'ble Court allowed W.P.NO.2877 of 1996 by an order dated 18.10.1996 and after contempt case was filed. The present Chief Minister as APCC President was also pleased to support the cause of the petitioner to conduct the elections. Section 32(7) (a) as interpreted by this Hon'ble Court in AIR 1989 AP 81 clearly shows that it is the duty of the respondents to appoint a person or persons to manage the affairs of the Society, "if there is no committee or in the opinion of the Government or the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee". Admittedly, the Cooperative Sugar Factories, unlike the other Cooperative societies have got direct and important role in the socio economic life of the farmers in the Factory Zone and therefore, the conduct of election and where it is not possible to conduct elections, appointment of the Person in Charge before the expiry of the term is absolutely necessary in law as well as on facts. The respondents inaction for the last three months is a deliberate violation of the statutory duty and a great disservice to the member-farmers. Since there are no irregularities admittedly, the outgoing elected committee ought to have been appointed as person in charge in view of the judgment of this court in AIR 1989 AP 81. It is also in the interest of the Society and its members to continue them as PIC to ensure continuity fo administration, accessibility to the members and democratic functioning which is one of the basic principles of cooperation. There is no reason why the elections could not be conducted before the expiry of the term. It is the duty of the second respondent Commissioner cum Registrar to conduct the elections before the expiry under Section 31(2)(b) of the Act and this cannot be abdicted in favour of the Government which amounts to violation of the statutory duty."

5. Heard learned counsel appearing for the petitioners and learned Government Pleader for Industries and Commerce appearing for the respondents.

6. Learned counsel appearing for the petitioners submits that there is a duty cast on the authorities to conduct the elections to the successor managing committee and

since the authorities failed to do it the term of existing managing committee is to be extended till such time the new managing committee takes charge of the affairs of the Society. The issue involved in these writ petitions is squarely covered by a judgment of this court in W.P.No.5935 of 2005 and the action of respondents 1 and 2 in appointing some other as person incharge other than the existing managing committee under section 32(7) of the Act is not legal and proper. To put it aptly the contention of the petitioner is that existing management should be continued to be as person incharge till the elections are held and new management takes charge of the affairs of the Societies. In support of his submissions reliance has been placed on

1. M.GIDDA REDDY V. DEPUTY REGISTRAR, KURNOOL
2. M.A.R.V.S. SAI BABA V. COMMISSIONER OF COOPERATIVE SOCIETIES
3. G.VENKATA SWAMI NAIDU V. DY.REGISTRAR OF COOPERATIVE SOCIETIES
4. M.RANGA REDDY V. STATE
5. P.S.CHETTY V. K.E. REDDY
6. M.KRISHNAMA NAIDU AND OTHERS V. STATE OF A.P.
7. G.V.JAYACHANDRA CHOWDARY V. GOVERNMENT OF A.P.

In the first cited decision, it has been held that the Registrar is not bound to extend the term of the Managing Committee in every case in which election could not be held. He has discretion under S.31(2)(b) whether to extend the term of the Committee or not. If he chooses to extend the term, he has to record the reasons therefor in writing. If he does not choose to do so, there is no necessity for him to record his reasons in writing. In exercising his discretion he cannot act arbitrarily or capriciously. The discretion has to be exercised for the purposes of the Act in good faith on relevant grounds. In para 28 of the judgment it is observed as follows:

> " 28. We are of the view that the decision of the Supreme Court has no application to the facts of this case. The present case is easily distinguishable. In the present case, there was no existing committee which could be superseded and to which the provisions of S.34 could be applied. The term of the committee had expired

even in 1974 and its term was being extended from time to time by the Registrar. The Committee had no vested right to continue after its term. Its continuation depended upon the exercise of discretion by the Registrar to extend its term or not. It was open to the Registrar in appropriate cases to exercise his discretion not to extend the term. If he chose not to extend the term he could not be said to be superseding the committee and doing indirectly what he could not do directly under S.34 of the Act."

In the second cited decision, it has been held that S.32(7)(a) of the Act is only an enabling provision and has to be resorted to by the Government or the Registrar as the case may be in very exceptional cases warranting such exercise of power. In the third cited decision, it has been held that all statutes have to be read having regard to the purpose and object thereto. If necessary, in order to uphold the constitutionality of the Government order the same must be read down. Para 8 of the judgment needs to be noted and it is thus:

" 8. Section 32(7)(a) and Section 131 of the A.P.Cooperative societies Act reads thus:

" 32(7)(a) If there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the government may, on their own and the Registrar with the previous approval of the Government, extend, from time to time, such period beyond six months, so however that the aggregate period include the extended period, if any, shall not exceed three years".

131. Power of Government to give directions:

1. The Government may generally or in any particular matter under this Act issue such orders and directions as they may consider necessary to the Registrar of Co-operative societies and thereupon eh shall give effect to such orders or directions and shall report to the Government in due course the result thereof.

2. In any case, in which a direction has been given under such

Section (1), the Government may call for and examine the record of the proceedings of the Registrar and pass such orders in the case as they may think fit:

Provided that before passing any order under this sub-section, the person likely to be affected by such order shall be given an opportunity of making his representation."

Section 32 which falls in Chapter IV of the Act dealing with the management of societies refers to general meeting and committee meetings of societies. A bare perusal of Section 32(7)(a) would show that the same is an enabling provision whereby the Government or the Registrar is of the opinion that it is not possible to call for a general meeting for the purpose of conducting election of members of the committee, then, the Government in respect of such class of societies as may be prescribed and the Registrar in all other cases, may appoint a person or persons to manage the affairs of such societies for a period not exceeding six months. However, the Government, on their own, and the Registrar with the previous approval of the Government, may extend the period beyond six months subject to a maximum period of three years. It is, therefore, absolutely clear that by reason of the aforementioned provision, the Government or the Registrar must apply its mind to the materials available on records as to arrive at a decision in relation to the cooperative societies in question that it is not possible to call for a general meeting for the purpose of conducting elections of members of the committee. The aforementioned Government order also directs that it is for the Registrar to arrive at such a finding that it is not possible to call for a general meeting for the purpose of conducting elections to the societies. Section 131 also confers power on the Government to issue directions in relation to a particular case. General directions can be issued only with a view to give boost to the cooperative movement and not to stultify the same."

In the fourth cited decision, it has been held that if the Government itself violates the law, if it violates the orders of the Court with what grace can it ask the citizens to have respect for law? The consequences of such violation may not be immediately apparent; the Government may get away with such violations and may gain their short-term political objectives; but in the long term they debilitate and destroy the constitutional system by enervating the Rule of Law. It is further held that whenever elections are postponed for unavoidable reasons, the elected committee should be continued in office (if necessary, by recording reasons therefor) provided the committee is not guilty of any irregularities or other malpractice. Only where the committee is guilty of irregularities and/or malpractices would it be not in the interest

of the society to continue such committee. The interest of the society demands that an elected committee should manage its affairs rather than a puisne officer of the Cooperative Department nominated by the Registrar. The basic idea underlying a cooperative society is that the members should themselves manage their own affairs and improve their economic lot in such manner as they think appropriate subject, of course, to the relevant laws. An official person in charge is the last person to be contemplated for achieving the said purpose. In the fifth cited decision, it has been held that there is no provision in the Act arresting the legal effects of disqualifications that will unceasingly flow from the happening of that event under Section 32(1)(A) of the Act. Section 123 of the A.P.Cooperative Societies Act, is not a provision for removal of disqualification but it only removes the obligation enjoined by law on the Societies. In the sixth cited decision, it has been held that Section 12-A of the Act is not violative of Article 31-A proviso or Article 300-A of the Constitution of India. It has been further held that Cooperative Societies in the State of Andhra Pradesh are created by Statute, and they are controlled by it. No person has any fundamental right to form any Cooperative Society under the Act. The Cooperative societies are created and governed by the statute. Section 12-A of the Act provides for a mode of dissolution of the Cooperative Sugar Factories in the circumstances provided for under the said provision. In the seventh cited decision, it has been held that Section 12-A(3) of the Act empowers the Registrar to appoint any expert including the Implementation Secretariat to assist and advise him for the purpose of matters enumerated in clauses (i) to (ix) of Section12-A(3). The implementation Secretariat has been defined in explanation (g), to mean the Implementation Secretariat established in the department of Public Enterprises by the State Government in G.O.Ms.No.150, dated 30-4-1998. The role of the Implementation Secretariat is only to assist and advise the Registrar on the matters specified in clauses (i) to (ix) of Section 12-A(3) of the Act. It has no role in the decision making process of the Registrar and the order to be passed under Section12-A(1) of the Act. The decision that a particular Co-operative Society has become sick and there is no possibility to rehabilitate the same and it is necessary in public interest to transfer the assets or assets and liabilities, in whole or in part, of such society to any other person, is required to be taken by the Registrar in which the Implementation Secretariat has no role to play.

7. Per contra, learned Government Pleader for Industries and Commerce submits that the term of the petitioners-managing committees has been expired, they have no right to seek a Writ of Mandamus to extend their term or to appoint them as persons incharge till the elections are conducted and new committee takes charge of the affairs of the Societies. He further submits that all the factories sustained losses to the tune of crores of rupees during their tenure of petitioners-committes and therefore it is not desirable to extend their tenure or appoint them as persons incharge of the managing committees of the societies. To buttress his submissions reliance has been placed on the decisions of our High Court in

1. M.JANAKI RAMULU V. PROHIBITON AND EXCISE SUPERINTENDENT
2. R.CHITTABBAI V. DY.REGISTRAR OF COOPERATIVE SOCIETIES
3. K.SOMASEKHAR RAO V. DCO/JOINT REGISTRAR OF COOPERATIVE SOCIETIES
4. ELAKOLANU PRIMARY AGRICULTURAL COOPERATIVE CREDIT SOCIETY LTD. V. GOVT. OF A.P.
5. M.RANGA REDDY V. STATE OF A.P.
6. KOLLA SURYANARAYANA V. DISTRICT COOPERATIVE OFFICER, KAKINADA

In the first cited decision, it has been held that no duty cast on the appropriate authority to nominate members of the previous committee. Para 8 of the judgment needs to be noted and it is thus:

> " 8. Section 32(7)(a) of the Act enables the appropriate authority – the Government or the Registrar, as the case may be, to appoint a person or persons to manage the affairs of the society for the period specified therein, if there is no committee or in the opinion of the Government or the Registrar it is not possible to call a general meeting for the purpose of conducting elections of members of the Committee. There is nothing in the language of the first and second provisos to Sec.31(1)(a) which diminutes the plenitude of power available to the Government or the Registrar to appoint a Persons committee under Sec.32(7)(a). While provisions of Sec.31, referred to above, enable the constitution of the first committee for a period of one year extendable by a further period normally of six months, and the appointment of any or all of the members of the committee if the bye-laws so warrant, the provisions of Sec.32 operate in

> circumstances where there is no committee. Both the provisions co-exist and there is no repugnance between them. The provisions of Sec.31 do not per se exclude the operation of Sec.32. This contention of the petitioner is thus misconceived, untenable and is accordingly rejected."

In the second cited decision, it has been held that a bare perusal of Sec.32(7)(a) shows that it is the power of the Registrar to appoint a person incharge when there is no managing committee for a period not exceeding six months. In the third cited decision, it has been held that absolute discretion has been conferred on the authority under section 32(7)(a) of the Act for making such appointment of persons incharge. The learned Single Judge after referring to Sec.32(2)(a) of the Act has observed in para 12 of the judgment as follows:

" 12. On the bare reading of the aforesaid provision it does not laid down nor pin point against any person to be appointed as persons-in-charge and in fact it confers ample powers on the part of the authorities for appointing a person to manage the affairs of the society. There is no restriction much less any preference provided there under for claiming for appointment as a persons-in-charge. In the circumstances, even by bare look at the provisions, it cannot be said that any person including the petitioners have any enforceable right to claim for appointment as a person-in-charge, but it is totally well within the exclusive parameters of discretion vested with such authority."

In the fourth cited decision, it has been held by a Division bench of our High Court that elected members of the Committee of the Society on the expiry of their term have no right to be appointed as persons incharge till the next election. It lies within the discretion of appropriate authority as to whether to appoint them or not. Paras 6, 7 and 8 of the judgment need to be noted and they are :

> " 6. A bare perusal of the aforementioned provision would clearly show that even assuming that the appellants herein do not stand disqualified, the same by itself cannot be a ground for their appointment as persons-in-charge. A writ in the nature of mandamus can be issued provided the writ petitioner establishes the existence of a legal right in himself and a corresponding legal duty in the respondent. Section 32(7) of the

> Act does not envisage that only the erstwhile members of the Co-operative society would be appointed as persons-in-charge. Section 32(7) confers discretion upon the appropriate authority to appoint persons-in-charge. It is not the case of the appellants that such a discretion has been arbitrarily exercised or is abused by the respondents herein. In such a situation, we are of the opinion that in the absence of the plea of malice-in-law, the Court shall not issue any directions which run contrary to the discretionary power conferred upon the appointing authority in terms of the aforementioned clause.
>
> 7. In the absence of any express provision in the statute, it cannot be said that the appellants had a legal right to be appointed as persons-in-charge even if it be assumed that they were not disqualified.
>
> 8. For the reasons aforementioned, we are of the opinion that no case has been made out to issue a writ in the nature of mandamus as prayed for by the appellants herein. The writ appeal, being devoid of any merit, is accordingly dismissed. No order as to costs."

In the fifth cited decision, it has been held that under section 32(7)(a) of the Act, appointment of the person-in-charge in the first instance can only be for a period of six months. Thereafter from time to time that period could be extended. The provision does not confer power on the Government or the Registrar to appoint a person-in-charge straightaway for a period of three years. In the sixth cited decision, a Division Bench of our High Court held that continuance of person incharge cannot be sought as a matter of right and there is no provision for issuing any show cause notice or for being heard in the event of cutting short of the term.

8. Learned counsel appearing for the petitioners-societies submits that since elections to the managing committees has not been held the present managing committee is to be appointed as persons-in-charge of the respective societies. Much emphasis has been laid on the judgment of this court in W.P.No.5935 of 2005 (The Managing Committee, The N.V.R.Cooperative Sugars Limited and others v. The Government of Andhra Pradesh represented by its Principal Secretary and others) disposed of on 31-3-2005. He further contends that after the present managing committees have taken over the Sugar Factories, they improved the performance of the Factories and made substantial contribution in the production of sugar.

9. Learned Government Pleader appearing for Industries and Commerce submitted that after the petitioners took over the management of the affairs of their respective societies, the accumulated losses have been increased and therefore it is not in the interest of the respective societies to allow the management committees whose term has been expired to appoint persons incharge or to extend their term.

10. It is not in dispute that all the Sugar Factories are not running in profits and there are accumulated losses. The accumulated losses are swelling from year to year. The reasons for increase in accumulated losses are multifarious. It appears the petitioners submitted a representation to the Government for their appointment as persons-in-charge of the respective Sugar Factories and the said representation seems to be pending. The representation submitted by the petitioners, reads as under:

> " We the Presidents of Andhra Pradesh Co-operative Sugar Factories wish to submit that with the kind blessings of Hon'ble Chief Minister of Andhra Pradesh, we have successfully completed our term of elected Boards for a period of 5 years i.e. from 2.4.2000 to 1.4.2005.
>
> During our tenure, we have strained a lot and after successfully forming our Government the Co-operative Sugar Factories have been saved from privatization and the grower community are very happy.
>
> We have implemented number of Welfare Schemes for the benefit of cane growers and employees. The cane growers felt happy and benefited with the co-operation extended by our Boards.
>
> Since the elected Boards period will be expired by 1.4.2005, to maintain the Co-operative Sugar Factories alive with good spirit, it is necessary to conduct elections to the Board of Directors of Sugar Factories. It is right time also for conducting the elections, as the cane growers are free from agricultural operations.
>
> Further, it is to submit that in previous occasions, if the Government was not in a position to conduct elections for some reason or the other, the Government have nominated the President and the Board of Directors, initially for a period of 6 months and extended till the elections are conducted.
>
> Under the circumstances submitted above the Hon'ble Chief Minister, Government of Andhra Pradesh is requested to take suitable and necessary action in respect of Co-operative Sugar

Factories in Andhra Pradesh to conduct Elections or to nominate the Presidents and the Boards of Directors to save the Co-operative Movement."

11. The prayer sought for in the writ petition has been extracted in the aforesaid paras of the judgment. Much stress has been laid by learned counsel appearing for the petitioners that the present managing committees being elected bodies are required to be continued till the newly elected bodies take charge of the affairs of the management of the societies. In regard to the appointment of persons-incharge is concerned, section 32(7)(a) of the Act reads as follows:

" 32(7)(a) - If there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the government, in respect of such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the government may, on their own and the Registrar with the previous approval of the Government, extend, from time to time, such period beyond six months, so however that the aggregate period include the extended period if any, shall not exceed three years."

12. A Division Bench of our High Court in ELAKOLANU PRIMARY AGRICULTURAL COOPERATIVE CREDIT SOCIETY LTD. V. GOVT. OF A.P.(11th cited decision) considered the same provision and held that elected members of the committee of the society on the expiry of their tenure have no right to be appointed as persons-in-charge till the next election. It lies within the discretion of the appropriate authority whether to appoint them or not. When they have not exercised their discretion arbitrarily, court cannot interfere. Following the said decision a single Judge of our High Court in K.SOMASEKHAR RAO V. DCO/JOINT REGISTRAR OF COOPERATIVE SOCIETIES decision has held that absolute discretion has been conferred on the authority under section 32(7)(a) of the Act for making such appointment of persons-in-charge and the existing managing committee has no locus standi to seek any extension of the said period or to continue as persons-in-charge.

13. In view of the settled position of law, no mandamus can be issued to the respondents to appoint the existing managing committees as persons-in-charge or to extend their tenure till the newly elected body takes charge of the affairs of the societies. There is a serious dispute between the parties as to whether the increase of the accumulated losses is because of the mis-management of the present managing committees or because of Government policies. However, a representation has been submitted by the petitioners-societies to the Government with a prayer to nominate them as persons-in-charge of the societies. It is for the Government to take necessary action on the said representation.

14. In the result, the writ petitions are disposed of directing the respondents to conduct the elections to the petitioners-societies as expeditiously as possible and, in case of holding elections is not possible within reasonable time, consider the representation filed by the petitioners-societies to appoint them as persons-in-charge of the management of the respective societies, and pass appropriate orders within two months from the date of receipt of a copy of this order. No orders as to costs.

Dated: 31-08-2005. (B.Seshasayana Reddy,J)

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